

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

A.J. BREDBERG, an individual,

Plaintiff,

v.

SOIL SCIENCE SOCIETY OF
AMERICA, a Wisconsin Corporation,

Defendant.

CASE NO. C10-5724BHS

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS FOR LACK OF
PERSONAL JURISDICTION

This matter comes before the Court on Defendant's ("SSSA") motion to dismiss for lack of personal jurisdiction or alternatively to transfer venue. Dkt. 7. The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion to dismiss and denies the alternative motion to transfer for the reasons stated herein.

I. PROCEDURAL HISTORY

On November 8, 2010, SSSA filed a motion to dismiss Plaintiff's ("Bredberg") action for lack of personal jurisdiction. Dkt. 7. On November 26, 2010, Bredberg opposed SSSA's motion to dismiss. Dkt. 9. On December 9, 2010, SSSA replied. Dkt. 12.

II. FACTUAL BACKGROUND

Bredberg, at all material times, was a resident of Washington, a Certified Soil Scientist, a Certified Professional Soil Classifier, a Professional Wetland Scientist, a

1 USDA Technical Service Provider, and a more than thirty-year member of SSSA.

2 Complaint ¶ 1.

3 SSSA is a scientific society that is a non-stock corporation, incorporated in and
4 having its principal place of business in Madison, Wisconsin. Affidavit of Ellen Bergfeld
5 (“Bergfeld Aff.”) ¶ 2. SSSA maintains all of its files in Madison. *Id.* SSSA is not
6 authorized to do business in Washington and does not have a registered agent for service
7 of process in Washington. *Id.* SSSA is “devoted to the promotion of the soil sciences, and
8 it has approximately 6,000 members worldwide,” of which 138 reside in Washington
9 (approximately 2%). *Id.* ¶ 4. SSSA’s members, like Bredberg, are not owners or
10 employees of SSSA, and they are not authorized to act on behalf of SSSA. *Id.* ¶ 5.

11 SSSA also certifies people meeting certain requirements as Certified Soil
12 Scientists and Certified Professional Soil Classifiers. *Id.* ¶ 8. Obtaining such certification
13 is voluntary. Currently, 56 certified individuals reside in Washington, less than 5% of the
14 persons certified by SSSA. *Id.*

15 To obtain certification, a person must notify SSSA of their interest and SSSA will
16 arrange an exam to be proctored in the person’s locale, typically at a local college. *Id.* ¶ 9.
17 SSSA employees do not proctor the exam, and the exams are returned to SSSA in
18 Madison for grading. *Id.* ¶ 10. A standing board made from volunteers around the United
19 States determines whether an individual should be certified; none of the current board
20 members reside in Washington. *Id.*

21 To carry out its mission of advancing the soil sciences, SSSA provides flyers and
22 handouts to colleges and universities. *Id.* ¶ 11. As part of these efforts, SSSA will
23 occasionally send representatives to trade shows or other similar events to promote its
24 mission. *Id.* at 11.

25 People, like Bredberg, who become certified professionals through SSSA must pay
26 an annual fee of \$95 and agree to be bound by the Code of Ethics set out by SSSA’s
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1 regulatory body, the American Society of Certified Professionals in Agronomy, Crops,
2 and Soils (“ARCPACS”). Complaint ¶ 8. Article V, paragraphs 1-3 of the ARCPACS
3 Code of Ethics requires a certified professional, like Bredberg, to bring an ethics
4 complaint when he/she has “positive knowledge of a deviation from the Code by another
5 Registrant.” Complaint ¶ 10.

6 On March 28, 2009, Bredberg filed an ethics complaint against another registrant
7 (also referred to as a certified professional), Kathy Verble (“Verble”). Bredberg believed
8 that Verble violated its code of ethics by incorrectly determining hydric soil conditions on
9 a property in Lebanon, Oregon. *Id.* ¶ 11. In response to the reported violation, Verble
10 filed a counterclaim against Bredberg with SSSA that alleged Bredberg lied,
11 misrepresented, and distorted facts in his ethics complaint. *Id.* ¶ 12. Verble’s counterclaim
12 was supported through the affidavit of another certified Professional Wetland Scientist,
13 Janet Morlan (“Morlan”). *Id.* ¶ 13. Verble’s counterclaim and Morlan’s affidavit were
14 made available to the worldwide membership of SSSA, Bredberg’s current and potential
15 clients and customers, and city, state, and federal officials. *Id.* ¶ 14. Bredberg contends in
16 his complaint that the information published contained non-privileged false and
17 defamatory statements and implications. *Id.* ¶ 16.

18 Finally, as a result of SSSA’s investigation, SSSA cleared Verble of Bredberg’s
19 complaint of her perceived ethical violations. However, SSSA determined through its
20 investigation of Verble’s counterclaim that Bredberg had violated the code of ethics and
21 he was cited for his actions by SSSA. SSSA required Bredberg to take continuing
22 education as part of remedying the matter. Bredberg lost his appeal to the SSSA board
23 regarding the ethical violations for which he was cited.

24 Bredberg’s complaint alleges that SSSA owed and breached contractual duties to
25 properly investigate his complaint, Verble’s counterclaim, and to exonerate him from any
26 false statements. *See, e.g., id.* ¶¶ 20-24, 33-37. Bredberg further alleges that SSSA
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1 violated its duty of good faith and fair dealing as a result of its investigation or lack
2 thereof. Additionally, Bredberg alleges several tort causes of action: (1)
3 misrepresentation/negligence; (2) tortious interference with economic relations; (3) false
4 light; and (4) intentional infliction of emotional distress. *Id.* ¶¶ 46-59.

5 III. DISCUSSION

6 A. Personal Jurisdiction Framework

7 Under Federal Rule of Civil Procedure 12(b)(2), a defendant may bring a motion
8 to dismiss for lack of personal jurisdiction. The plaintiff then bears the burden of proving
9 such jurisdiction. *Butcher's Union Local No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 538
10 (9th Cir. 1986). When the district court rules on the motion based on affidavits and
11 discovery materials without an evidentiary hearing, the plaintiff need only make a prima
12 facie showing of personal jurisdiction. *See Ochoa v. J.B. Martin & Sons Farms, Inc.*, 287
13 F.3d 1182, 1187 (9th Cir. 2002). "In determining whether [Plaintiff] [has] met this prima
14 facie burden, uncontroverted allegations in [his] complaint must be taken as true, and
15 'conflicts between the facts contained in the parties' affidavits must be resolved in [his]
16 favor" *Id.* (quoting *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d
17 586, 588 (9th Cir. 1996) (brackets in original)). "Additionally, any evidentiary materials
18 submitted on the motion 'are construed in the light most favorable to the plaintiff and all
19 doubts are resolved in [his] favor.'" *Id.* (quoting *Metro. Life Ins. Co. v. Neaves*, 912 F.2d
20 1062, 1064 n. 1 (9th Cir. 1990) (citation and internal quotation marks omitted; brackets in
21 original)).

22
23 "In the absence of a federal rule or statute establishing a federal basis for the
24 assertion of personal jurisdiction, the personal jurisdiction of the district courts is
25 determined in diversity cases by reference to the law of the state in which the federal
26 court sits." *Kendall v. Overseas Dev. Corp.*, 700 F.2d 536, 538 (9th Cir. 1983) (citations
27 omitted); *see also Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir.
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2004) (citing Fed. R. Civ. P. 4(k)(1)(a)). Washington’s long-arm statute extends the court’s personal jurisdiction to the broadest reach that the United States Constitution permits. *Byron Nelson Co. v. Orchard Management Corp.*, 95 Wn. App. 462, 465 (1999). Because Washington’s long-arm jurisdictional statute is coextensive with federal due process requirements, the jurisdictional analyses under state law and federal due process are the same. *Schwarzenegger*, 374 F.3d at 800-801. “For a court to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’” *Schwarzenegger*, 374 F.3d at 801 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks and citation omitted)). There are two types of personal jurisdiction: general and specific. See *Brand v. Menlove Dodge*, 796 F.2d 1070, 1073 (9th Cir. 1986).

1. General Jurisdiction

General personal jurisdiction “permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world.” *Schwarzenegger*, 374 F.3d at 801. A court may assert general jurisdiction over a defendant if the defendant engages in “substantial” or “continuous and systematic” business activities. *Helicopteros*, 466 U.S. at 416 (citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952)). “The standard for establishing general jurisdiction is ‘fairly high,’ and requires that the defendant’s contacts be of the sort that approximate physical presence” in the forum state. *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000); see also *Brand v. Menlove Dodge*, 796 F.2d 1070, 1073 (9th Cir. 1986) (collecting cases where general jurisdiction was denied despite the defendants’ significant contacts with the forum states).

“Factors to be taken into consideration are whether the defendant makes sales, solicits or engages in business in the state, serves the state’s markets, designates an agent

1 for service of process, holds a license, or is incorporated there.” *Bancroft*, 223 F.3d at
2 1086. In applying the “substantial” or “continuous and systematic” contacts test, the focus
3 is primarily on two areas. First, there must be some kind of deliberate “presence” in the
4 forum state, including physical facilities, bank accounts, agents, registration, or
5 incorporation. An additional consideration is whether the defendant has engaged in active
6 solicitation toward and participation in the state’s markets, i.e., the economic reality of
7 the defendant’s activities in the state. *Helicopteros*, 466 U.S. at 417 (1984); *Gates Learjet*
8 *Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984).

9 Here, Bredberg has not sufficiently pled facts to support his contention that SSSA
10 conducts the requisite “substantial” or “continuous and systematic” business activities
11 that would permit the Court to exert general jurisdiction over SSSA in this matter.
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13 **2. Specific Jurisdiction**

14 In the absence of general personal jurisdiction, a forum may only exercise specific
15 personal jurisdiction over a defendant. *See Yahoo! Inc. v. La Ligue Contre Le Racisme Et*
16 *L’Antisemitisme*, 433 F.3d 1199, 1205 (9th Cir. 2006). The Ninth Circuit employs a
17 three-part test to determine whether the exercise of specific jurisdiction satisfies the
18 requirements of due process: (1) the defendant must have purposely availed itself of the
19 privilege of conducting activities in the forum; (2) the plaintiff’s claim must arise out of
20 that activity; and (3) the exercise of jurisdiction must be reasonable. *Shute v. Carnival*
21 *Cruise Lines*, 897 F.2d 377, 381 (9th Cir. 1990) (emphasis added). Under this three-prong
22 test, the plaintiff bears the burden of satisfying the first two prongs. *Schwarzenegger*, 374
23 F.3d at 802. If the plaintiff meets this burden, the defendant then has the burden to present
24 a compelling case why the exercise of jurisdiction would be unreasonable. *Id.* (citing
25 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985)).

26 **a. Purposeful Availment**

27 As explained by the Ninth Circuit:
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1 We often use the phrase “purposeful availment,” in shorthand
2 fashion, to include both purposeful availment and purposeful direction . . . ,
3 but availment and direction are, in fact, two distinct concepts. A purposeful
4 availment analysis is most often used in suits sounding in contract A
5 purposeful direction analysis, on the other hand, is most often used in suits
6 sounding in tort.

7 *Schwarzenegger*, 374 F.3d at 802. Because Bredberg asserts both contract and tort claims
8 against SSSA, the Court analyzes personal jurisdiction under both the purposeful
9 availment and the purposeful direction analysis.

10 “Turning first to purposeful direction, under our precedents, the purposeful
11 direction . . . requirement is analyzed in intentional tort cases under the ‘effects’ test
12 derived from *Calder v. Jones*, 465 U.S. 783, 104 S. Ct. 1482, 79 L. Ed. 2d 804 . . .
13 (1984).” “Under *Calder*, the ‘effects’ test requires that the defendant allegedly have (1)
14 committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that
15 the defendant knows is likely to be suffered in the forum state.” *Schwarzenegger*, 374
16 F.3d at 803. A showing that a defendant purposefully directed his conduct toward a forum
17 state usually consists of evidence of the defendant’s actions outside the forum state that
18 are directed at the forum, such as the distribution in the forum state of goods originating
19 elsewhere. *Schwarzenegger*, 374 F.3d at 803.

20 Here, Bredberg has not pled sufficient facts to establish that SSSA ever committed
21 an intentional act that was expressly aimed at Washington. Indeed, the involvement of
22 SSSA that relates to the alleged tortious conduct all revolves around circumstances
23 arising in Oregon with respect to the perceived ethical violations of Verble. Thus, while
24 Bredberg makes a valid argument that SSSA would have known its actions in Oregon
25 could cause harm to Bredberg in Washington (the third element, above), Bredberg fails to
26 establish the first two elements (intentional act, expressly aimed at forum state). Further,
27 and more tellingly, Bredberg’s tort claims actually arise out of his breach of contract
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1 claims. Accordingly, the Court must apply the purposeful availment test in determining
2 whether it has specific jurisdiction over SSSA.

3 Under the purposeful availment test, the Ninth Circuit considers “whether a
4 defendant ‘purposefully avails itself of the privilege of conducting activities’ or
5 ‘consummates a transaction’ in the forum, focusing on activities such as delivering goods
6 or executing a contract.” *Yahoo!*, 433 F.3d at 1206. A defendant has engaged in
7 affirmative conduct and thereby “purposely availed himself of the benefits of a forum if
8 he has deliberately engaged in significant activities within a State *or has created*
9 ‘*continuing obligations*’ between himself and the residents of the forum.” *Gray & Co. v.*
10 *Fistenberg Mach. Co.*, 913 F.2d 758, 760 (9th Cir. 1990) (quoting *Burger King Corp.*,
11 471 U.S. at 475-76) (emphasis added); *see Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d
12 414, 417 (9th Cir. 1997) (same) (citing *Ballard*, 65 F.3d at 1498). However,

14 [a] contract alone does not automatically establish the requisite minimum
15 contacts necessary for the exercise of personal jurisdiction. “Prior
16 negotiations and contemplated future consequences, along with the terms of
17 the contract and the parties’ actual course of dealing” are the factors to be
18 considered. The foreseeability of causing injury in another state is not a
19 sufficient basis on which to exercise jurisdiction.

20 *Gray*, 913 F.2d at 760 (quoting and citing *Burger King*, 471 U.S. at 474, 478-79).

21 The Ninth Circuit’s holding in *Roth v. Garcia Marquez*, 942 F.2d 617, 622 (9th
22 Cir. 1991), is particularly helpful and somewhat factually analogous to the instant matter.
23 There, the Ninth Circuit discussed the purposeful availment issue in a contract case as
24 follows:

25 In the contract context, however, *Burger King* specifically noted that
26 the existence of a contract with a resident of the forum state is insufficient
27 by itself to create personal jurisdiction over the nonresident. 471 U.S. at
28 478, 105 S.Ct. at 2185; *see also Gray*, 913 F.2d at 760. *Burger King* stated
that “with respect to interstate contractual obligations, we have emphasized
that parties who ‘reach out beyond one state and create continuing
relationships and obligations with citizens of another state’ are subject to
regulation and sanctions in the other State for the consequences of their
activities.” 471 U.S. at 473 (quoting *Travelers Health Ass’n v. Virginia*, 339
U.S. 643, 647 (1950)).

1 Appellees argue that because Roth initiated all the contacts and
 2 because he was the one who “reached out” to effect the contract, they
 3 should not be subject to California law. There was no solicitation of
 4 business by appellees, they maintain, that resulted in contract negotiations
 5 or the transaction of business. *See Shute*, 897 F.2d at 381; *Sinatra*, 854 F.2d
 6 at 1195. We have explained that “the purposeful availment analysis turns
 upon whether the defendant’s contacts are attributable to ‘actions by the
 defendant himself,’ or conversely to the unilateral activity of another party.”
Hirsch v. Blue Cross, Blue Shield of Kansas City, 800 F.2d 1474, 1478 (9th
 Cir. 1986) (quoting *Burger King*, 471 U.S. at 475) (emphasis in *Burger*
King).

7 Here, it seems clear that the predominant efforts were made by the
 8 appellant, not the appellees. Roth traveled to Havana, Barcelona, and
 9 Mexico City in his peripatetic effort to secure the movie rights. Garcia
 10 Marquez and Balcells were in Los Angeles for other purposes when each
 11 met individually with Roth. While we concede that negotiations did take
 12 place at that time, it should be borne in mind that “temporary physical
 13 presence” in the forum does not suffice to confer personal jurisdiction.
FDIC, 828 F.2d at 1443. Further, Roth and his agents placed over 100 calls
 14 and sent numerous faxes to the two appellees. “When a California business
 seeks out purchasers in other states . . . [and] deals with them by
 out-of-state agents or by interstate mail and telephone, it is not entitled to
 force the customer to come to California to defend an action on the
 contract.” *Thos. P. Gonzalez Corp. v. Consejo Nacional de Produccion de*
Costa Rica, 614 F.2d 1247, 1252 (9th Cir. 1980) (quoting *Interdyne Co. v.*
SYS Computer Corp., 31 Cal. App.3d 508, 510 (1973)).

15 Roth also contends that the phone lines were used in the other
 16 direction-i.e., appellees made calls and returned letters and faxes to him. As
 17 this court held in *Shute*, “[M]any transactions take place solely by mail or
 18 wire across state lines, obviating the need for physical presence Thus,
 the Court has held that the physical absence of the defendant and the
 transaction from the forum cannot defeat the exercise of personal
 jurisdiction.” *Id.* at 382. However, “[b]oth this court and the courts of
 California have concluded that ordinarily ‘use of the mails, telephone, or
 19 other international communications simply do not qualify as purposeful
 20 activity invoking the benefits and protection of the [forum] state.’” *Peterson*
v. Kennedy, 771 F.2d 1244, 1262 (9th Cir. 1985) (quoting *Gonzalez*, 614
 21 F.2d at 1254) (footnote omitted); see also *McGlinchy v. Shell Chem. Co.*,
 845 F.2d 802, 816 (9th Cir.1988) (no jurisdiction where contract signed in
 22 forum because negotiated in England, and execution and termination
 conducted by mail).

23 There are two facts, then, that marginally work in appellees’ favor:
 24 their minimal physical presence in the forum and the fact that it was
 25 appellant who made the sedulous efforts of solicitation. While this is a very
 26 close call, a final and broader issue appears to swing the first prong for
 27 Roth, namely the future consequences of the contract. *See, e.g., FDIC*, 828
 28 F.2d at 1443 (“[t]he negotiations and contemplated future consequences of
 the contract . . . must be considered”); *Gray*, 913 F.2d at 760 (“[p]rior
 negotiations and contemplated future consequences, along with the terms of
 the contract and the parties’ actual course of dealing’ are the factors to be
 considered”) (quoting *Burger King*, 471 U.S. at 479); *Corporate Inv.*

1 *Business Brokers v. Melcher*, 824 F.2d 786, 789 (9th Cir. 1987) (“[*Burger*
2 *King*] insisted that past and future consequences of the contractual
3 arrangement involving a resident of the forum state be evaluated.”); *Hirsch*,
4 800 F.2d at 1478 (“prong is satisfied when a defendant takes deliberate
5 actions within the forum state or creates continuing obligations to forum
6 residents”). The *Burger King* Court, in finding jurisdiction, emphasized that
7 the Michigan franchisee defendant had entered into a relationship that
8 “envisioned continuing and wide-reaching contacts with *Burger King* in
9 Florida [the forum].” 471 U.S. at 480.

10 The point here is simply that the contract concerned a film, most of
11 the work for which would have been performed in California. Though the
12 shooting most likely would have taken place in Brazil, all of the editing,
13 production work, and advertising would have occurred in California. This is
14 not an instance where the contract was a one-shot deal that was merely
15 negotiated and signed by one party in the forum; on the contrary, most of
16 the future of the contract would have centered on the forum In looking
17 at the “economic reality,” *Haisten*, 784 F.2d at 1398, it seems that the
18 contract’s subject would have continuing and extensive involvement with
19 the forum.

20 Though neither side decisively triumphs under this analysis, it
21 appears that there was enough purposeful availment here to compel a
22 finding of jurisdiction on this prong.

23 *Roth*, 942 F.2d at 622.

24 Applying the reasoning of *Roth* to this case, the Court focuses on the fact that
25 Bredberg and SSSA entered into a contractual arrangement whereby Bredberg was
26 obligated to follow the code of ethics and report violations of other registrants who were
27 believed to have violated the same code of ethics. Bredberg asserts that this duty is
28 mirrored by the SSSA’s duty to adequately and properly investigate such claims.
Although it is uncontroverted that Bredberg contacted SSSA voluntarily to become
certified through their program, the parties appeared to have contemplated an ongoing
relationship between a Washington resident (Bredberg) and a Wisconsin organization
(SSSA). Bredberg paid \$95 to SSSA to become certified and as a result of being certified
he was thereafter obligated by SSSA to conform with and be a member-enforcer of the
SSSA’s code of ethics. Under the terms of their relationship, SSSA was not only required
to investigate claims against Bredberg for ethical violations but also to investigate the
violations that Bredberg might report. SSSA must have foreseen the distinct possibility of

1 enforcing and carrying out its duties with respect to the code of ethics as it pertained to
2 Bredberg, a Washington citizen. Thus, like the case in *Roth*, this close call is resolved in
3 favor of Bredberg because SSSA has sufficiently availed itself of the privileges and
4 protections of Washington.

5 **b. Locus of Activity**

6 The second prong of the Ninth Circuit's test to determine whether the exercise of
7 specific jurisdiction satisfies due process is that the plaintiff's claim must arise out of that
8 activity conducted in the forum state. The Ninth Circuit has adopted a "but for" test for
9 determining whether a plaintiff's cause of action arises out of the defendant's
10 forum-related activities. *Doe v. America Nat. Red Cross*, 112 F.3d 1048, 1051 (9th Cir.
11 1997); see *Omeluk v. Langsten Slip & Batbyggeri*, 52 F.3d 267, 271 (9th Cir. 1995). The
12 "arising out of" requirement is met if, but for the contacts between the defendant and the
13 forum state, the cause of action would not have arisen. See *Terracom v. Valley Nat. Bank*,
14 49 F.3d 555, 561 (9th Cir. 1995).

15 Applying the "but for" test to Bredberg's case, the Court concludes that, but for the
16 contract with a Washington citizen, which obligated Bredberg to report ethical violations
17 and required SSSA to investigate and enforce the code of ethics, this action would not
18 have arisen.

19 **c. Reasonableness**

20 Finally, under the third prong of the Ninth Circuit test, Plaintiff must demonstrate
21 that the exercise of jurisdiction is reasonable. "[T]here is a presumption of reasonableness
22 upon a showing that the defendant purposefully directed his action at forum residents
23 which the defendant bears the burden of overcoming by presenting a compelling case that
24 jurisdiction would be unreasonable." *Columbia*, 106 F.3d at 289 (quoting *Haisten v.*
25 *Grass Valley Medical Reimbursement*, 784 F.2d 1392, 1397 (9th Cir. 1986) (citing
26 *Burger King*, 471 U.S. at 477)).
27
28

1 The Ninth Circuit considers the following seven factors in determining whether the
2 exercise of specific jurisdiction over a defendant is reasonable: (1) the extent of the
3 defendant's purposeful interjection into the forum state; (2) the burden on the defendant
4 of litigating in the forum; (3) the extent of conflict with the sovereignty of the defendant's
5 state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient
6 judicial resolution of the dispute; (6) the importance of the forum to the plaintiff's interest
7 in convenient and effective relief; and (7) the existence of an alternative forum. *See*
8 *Ziegler v. Indian River Country*, 64 F.3d 470, 475 (9th Cir. 1995) (citing *Terracom*, 49
9 F.3d at 561) (finding that all seven factors must be weighed, but none are dispositive).

10 **i. Extent of Interjection**

11 Although SSSA argues that it did not purposefully interject itself into Washington,
12 it fails to recognize, or at least discounts the fact, that it set up an organization that seeks
13 to certify individuals around the country in different states. Put otherwise, SSSA has
14 interjected itself into Washington by creating a certification program that invites people
15 like Bredberg to apply and pay for the opportunity to be certified in an effort to remain
16 competitive in the soil sciences industry in Washington and elsewhere.

17 Therefore, this factor tips in favor of Bredberg.

18 **ii. Burden on SSSA**

19 SSSA argues that the burden on it to litigate this matter in Washington is heavy.
20 SSSA asserts that it has no officers, agents, employees or otherwise in Washington. SSSA
21 maintains that the greater majority of the files and witnesses related to this matter reside
22 in Wisconsin. *See Bergfeld Aff.* ¶ 21. SSSA also maintains that Wisconsin residents are
23 the people who have knowledge about the internal policies and procedures that relate to
24 the investigation of ethics complaints. *Id.* Finally, SSSA is a nonprofit whose financial
25 bottom line would be significantly impacted if it were to be required to litigate this matter
26 in Washington. *Id.*

1 Bredberg argues that the files would be easily transferred to Washington
2 electronically. He argues that SSSA board members have to travel throughout the country
3 for their positions on a somewhat regular basis. He further argues that the ethics
4 determination that SSSA made against his favor was conducted by teleconference
5 because none of its members reside in Wisconsin. Additionally, he points out that many
6 of his witnesses reside in Washington.

7 On balance, this factor favors SSSA. *See Caruth v. Int'l Psychoanalytical Ass'n*,
8 59 F.3d 126, 129 (9th Cir. 1995) (defendant's "burden is the primary concern in an
9 assessment of reasonableness) (citing *FDIC v. British-American Ins. Co.*, 828 F.2d 1439,
10 1444 (9th Cir. 1987)).

11 **iii. Conflict with Sovereignty**

12 SSSA is a Wisconsin non-profit corporation operating under the applicable laws of
13 Wisconsin. Permitting this action to go forward in this Court deprives Wisconsin of its
14 ability to regulate businesses incorporated in and being principally based in Wisconsin.
15

16 Therefore, this factor weighs in favor of SSSA.

17 **iv. Forum State's Interest**

18 SSSA does not dispute that Washington has a significant interest in redressing the
19 injuries of its residents. However, SSSA asserts that Bredberg will be able to obtain any
20 available remedies in the Western District of Wisconsin. The causes of action alleged by
21 Bredberg are not Washington specific and are of a general tort and contract nature.
22 Washington's interest would be able to be served if this action were venued in Wisconsin.

23 Therefore, this factor is somewhat neutral or slightly in favor of Bredberg.

24 **v. Efficient Resolution**

25 With many of the witnesses and a majority of the evidence being located in
26 Wisconsin, it's difficult to escape the reality that this action would be more efficiently
27 litigated in Wisconsin.
28

1 Therefore, this factor weighs in favor of SSSA.

2 **vi. Importance of Forum to Plaintiff's Interests**

3 This factor “nominally remains part of this test, [however,] cases have cast doubt
4 on its significance.” *See, e.g., id.* (collecting cases).

5 Therefore, this factor does not significantly influence the Court’s analysis.

6 **vii. Existence of Alternative Forum**

7 The burden of showing the unavailability of an alternative forum rests with
8 Bredberg. *Id.* (citing *FDIC*, 828 F.2d at 1445. Breberg has not established that he would
9 be precluded from suing SSSA outside of Washington or that his claims could not be
10 effectively remedied in other jurisdictions, such as Wisconsin. *See id.*

11 Therefore, this factor weighs heavily in favor of SSSA.

12 **viii. Balancing the Factors**

13 On balance, the factors weigh mostly, if not strongly, in favor of SSSA. Therefore,
14 SSSA has met its burden in making a compelling case that the exercise of jurisdiction
15 over it would be unreasonable in this case.
16

17 **d. Conclusion**

18 Based on the foregoing, the Court concludes it would be unreasonable to exert
19 specific jurisdiction over SSSA in this matter.

20 **B. Motion to Dismiss or Transfer**

21 SSSA moves the Court to either dismiss this action for lack of personal jurisdiction
22 or to exercise its authority to transfer the matter to the Western District of Wisconsin
23 pursuant to 28 U.S.C. §§ 1404(a) and 1406(a).

24 Because the Court concludes above that it lacks both general and specific personal
25 jurisdiction over SSSA, the Court grants SSSA’s motion to dismiss.


26 Having found a lack of personal jurisdiction, the Court need not entertain the
27 alternative motion for change of venue pursuant to 28 U.S.C. §§ 1404(a), 1406(a).
28

1 However, even if it were determined that specific personal jurisdiction was reasonable to
2 exert over SSSA, the Court suggests that a venue would more properly lie in either
3 Oregon or Wisconsin.

4 **IV. ORDER**

5 Therefore, it is hereby **ORDERED** that the Court **GRANTS** SSSA's motion to
6 dismiss this action for lack of personal jurisdiction.

7 DATED this 24th day of January, 2011.

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10 BENJAMIN H. SETTLE
11 United States District Judge
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